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STATUTORY INSTRUMENTS

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**2001 No. 2636**

**The Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001**

**PART III**

**EFFECT OF RESTRICTIONS AND PROHIBITIONS IMPOSED UNDER OLD LAW**

*Directions and requirements under the Insurance Companies Act*

**Directions under sections 11 and 12A of the Insurance Companies Act**

- 40.**—(1) This article applies where immediately before commencement a person was subject to—
- (a) a direction given under section 11 of the Insurance Companies Act; or
  - (b) a direction given under section 12A of that Act and confirmed under that section.
- (2) The direction has effect after commencement—
- (a) if it relates to the carrying on of an activity or activities which the person has a Part IV permission to carry on, as if it were a requirement, imposed under section 43, that he refrain from carrying on an activity which immediately before commencement he was prevented by the direction from carrying on;
  - (b) if it relates to the carrying on of an activity or activities which he has a permission to carry on as a result of Schedule 4, as if it were a requirement, imposed under section 196, that he refrain as mentioned in sub-paragraph (a).

**Requirements under sections 38, 39, 40, 41, 43 and 45 of the Insurance Companies Act**

- 41.**—(1) This article applies where immediately before commencement a person was—
- (a) authorised under section 3 or 4 of the Insurance Companies Act; and
  - (b) subject to a requirement imposed under section 38, 39, 40, 41, 43 or 45 of that Act.
- (2) The requirement has effect after commencement—
- (a) if it relates to the carrying on of an activity or activities which the person has a Part IV permission to carry on, as if it were a requirement imposed on him under section 43;
  - (b) if it relates to the carrying on of an activity or activities which he has a permission to carry on as a result of Schedule 4, as if it were a requirement imposed on him under section 196.
- (3) Where by virtue of this article a requirement originally imposed under the Insurance Companies Act has effect as—
- (a) an assets requirement, as defined by section 48(3); or
  - (b) a requirement to which section 201 applies,
- subsections (4) to (11) of section 48 apply accordingly.

(4) In relation to a requirement originally imposed under section 40 of the Insurance Companies Act (custody of assets)—

- (a) any approval of a trustee by the Authority which was effective for the purposes of the requirement immediately before commencement continues to have effect for those purposes after commencement; and
- (b) any consent which was given under subsection (4) of that section and was effective immediately before commencement has effect after commencement as if given under section 48(6).

(5) Where section 48(8) applies in relation to a requirement originally imposed under section 40 of the Insurance Companies Act, any notice in relation to the requirement given to a trustee under section 40(3) of that Act is to be treated as given under section 48(8).

(6) In relation to a requirement which has effect under paragraph (2) and which was originally imposed under section 43 of the Insurance Companies Act, the requirement is that where the person is required by the Authority's rules to deposit any accounts or statement of the kind referred to in section 43 of that Act, he must do so on or before the date specified by the requirement originally imposed.

#### **Order of the court under section 40A of the Insurance Companies Act**

**42.**—(1) This article applies to a person where there is in force against him immediately before commencement an order of the court made under section 40A of the Insurance Companies Act<sup>(1)</sup>.

(2) A person to whom this article applies is to be treated after commencement as if he were subject to an assets requirement within the meaning of section 48(3)(a) prohibiting him from disposing of or otherwise dealing with his assets in any manner which would have been prohibited by the order as it had effect immediately before commencement (having regard to any subsequent orders made under section 40A(2) of the Insurance Companies Act) and section 48(4) and (5) apply accordingly.

(3) On commencement the order of the court referred to in paragraph (1) ceases to have effect.

(4) Where—

- (a) before commencement, a person ("P") was subject to an order made under section 40A of the Insurance Companies Act;
- (b) the Authority had, at any time after the making of this Order, given notice of that order to an institution with whom P keeps an account;
- (c) P is subject to a requirement after commencement by virtue of paragraph (2),

that notice is to be treated after commencement as if it had been given under section 48(4)(b).

#### **Requirements imposed on former Lloyd's underwriting members**

**43.**—(1) This article applies to a former member of Lloyd's who, immediately before commencement, was treated by virtue of regulation 3(1)(b) of the Insurance (Lloyd's) Regulations 1996<sup>(2)</sup> as if he were a UK company to which Part II of the Insurance Companies Act applied.

(2) Where immediately before commencement, a person to whom this article applies was subject to a requirement imposed under section 45 of the Insurance Companies Act in respect of any liability of his under contracts of insurance entered into by him as a member of Lloyd's, that requirement takes effect after commencement as if it were a requirement imposed on him under section 320(3) (whether or not he is a former underwriting member for the purposes of that section).

(1) Section 40A was inserted by S.I.1994/1696 reg. 22 and has been amended by S.I. 1997/2781, art. 8, Sch, Pt I, paras 1, 25.

(2) S.I. 1996/3011.

### **Requirements and directions under Schedule 2F to the Insurance Companies Act**

**44.**—(1) This article applies where immediately before commencement an EEA firm was subject to—

- (a) a requirement imposed under section 45 of the Insurance Companies Act by virtue of paragraph 15 of Schedule 2F to that Act; or
- (b) a direction given under paragraph 16 or 17 of that Schedule.

(2) In a case where this article applies, the requirement or direction has effect after commencement—

- (a) if it relates to the carrying on of an activity or activities which the person has a Part IV permission to carry on, as if it were a requirement imposed on him under section 43;
- (b) if it relates to the carrying on of an activity or activities which he has permission to carry on as a result of Schedule 3 or 4, as if it were a requirement imposed on him under section 196.